

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

BABY DOE, <i>et al.</i> ,	X	
	:	
Plaintiffs,	:	
	:	CIVIL ACTION NO. 3:22-CV-49-NKM-JCH
v.	:	
	:	
JOSHUA MAST, <i>et al.</i> ,	:	
	:	
Defendants.	:	
	:	
	X	

**PLAINTIFFS’ SUR-REPLY IN SUPPORT OF MOTION FOR SANCTIONS
AS TO DEFENDANTS JOSHUA MAST AND STEPHANIE MAST**

Plaintiffs file this sur-reply in support of their Motion for Sanctions as to Defendants Joshua Mast and Stephanie Mast (“J&S Mast”) (ECF No. 336). Plaintiffs do so to provide the Court additional information regarding J&S Mast’s failure to abide by this Court’s November 28, 2023 Order, which compelled their production of “[a]ll other responsive materials” within 30 days of the Order. *See* ECF No. 326 at 12.

As previously noted, J&S Mast admit that they have not produced 2,176 responsive documents that they assert are “owned by the federal government” and require the U.S. government’s approval under *Touhy*.¹ J&S Mast Opp. to Pls.’ Mot. for Sanctions (ECF No. 340) (“Opp.”) at 6. Plaintiffs previously were aware that J&S Mast failed to seek *Touhy* approval for the production of these 2,176 documents until *sometime* after the December 28, 2023 deadline for their complete document production. *See* Opp., Exh. B (Jan. 2, 2024 Letter from K. Wyer to M. Francisco).

¹ *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

Plaintiffs only recently learned that J&S Mast actually did not seek *Touhy* approval from the U.S. government until ***February 2 and 9, 2024*** – 5-6 weeks after the Court’s production deadline and more than 13 months after Plaintiffs originally served their RFPs on December 22, 2022. *See* ECF No. 230-1. Plaintiffs did not learn this information from J&S Mast, but from counsel at the Department of Justice, who copied Plaintiffs on their correspondence to J&S Mast’s counsel. *See* March 29, 2024 Letter from K. Wyer to M. Francisco (attached as Exh. 1).

There is no excuse for J&S Mast’s delay. J&S Mast have had Plaintiffs’ RFPs since December 2022, and, as a result of a motion to compel, were ***ordered*** by this Court to produce all responsive documents by December 28, 2023. Not only have J&S Mast still not produced thousands of responsive documents – even today, more than three months past the Court’s deadline for production – but they didn’t even seek the approval they claim they need for the production of more than 2,000 documents until more than a month past the Court’s deadline.

There is no justification for such behavior, which grievously prejudices Plaintiffs. As the Court is aware, discovery closes in this matter on June 11, 2024 – a little over two months from now. Yet, Plaintiffs cannot take depositions – and certainly cannot depose the very individuals who kidnapped Baby Doe – while J&S Mast withhold thousands of responsive documents. Nor can they know what additional third party discovery they may need to take. J&S Mast’s efforts to further delay this litigation cannot be condoned.

Accordingly, Plaintiffs respectfully ask the Court to grant their motion for sanctions.

April 2, 2024

Respectfully submitted,

/s/ Maya Eckstein

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of April 2024, I filed the foregoing with the Court's electronic case-filing system, thereby serving all counsel of record in this case.

By: /s/ Maya Eckstein
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